

HOUSE _____ AMENDMENT NO. _____

Offered By

AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 0233,
Section A, Page 1, Line 3, by inserting immediately after all of said line the following:

"227.241. Sections 227.241 to 227.249 shall be known as the "State Highway Utility Relocation Act". The commission shall not be required to redesign any project plans or mail additional notices, nor shall the owner of a utility facility be required to submit additional relocation plans or otherwise comply with requirements of sections 227.241 to 227.249 for any construction project on a state highway for which the letting date was prior to December 31, 2005.

227.242. As used in sections 227.241 to 227.249, the following terms shall mean:

(1) "Act of God", an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "Commission," the highways and transportation commission created under section 226.020, RSMo, and article IV, section 29 of the Missouri Constitution, the director, or designees of the director for the purpose of sections 227.240 to 227.248;

(3) "Construction project", all contracts for construction of state highways let under section 227.100, except for contracts for maintenance or resurfacing determined by the commission not to conflict with public utilities and routine maintenance and repairs completed by employees of the commission. This term shall also include state highway construction projects of

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1 transportation development districts and corporations under chapter 238, RSMo, if such projects
2 are awarded pursuant to section 227.100. The term "construction project" shall not include
3 projects for road beautification, road irrigation, and drainage projects, culvert installation or
4 repair, sound wall installation, decorative lighting, landscaping, or other projects not directly
5 related to improving or routing highway traffic. The term "construction project" shall also not
6 include any project authorized by the commission to accommodate any private development,
7 including a shopping mall, stadium, office building, or arena;

8 (4) "Contractor", any person entering into a contract with the highway and transportation
9 commission for purposes of completing a construction project on a state highway, including a
10 subcontractor or supplier to such contractor;

11 (5) "Customer delays", delays in the relocation work due to delays caused by the utility's
12 customers, including but not limited to delays in getting written or oral approvals from customers
13 for permissible utility service cut-over dates;

14 (6) "Cut-over date", the date utility owner interrupts utility service to a utility customer
15 provided through an existing utility facility and switches the service over to a new utility facility
16 serving the customer;

17 (7) "Day" or "days", a business day or a period of consecutive business days consisting of
18 every work day excluding Saturdays, Sundays, and legal holidays;

19 (8) "Director", the director of the Missouri department of transportation appointed
20 pursuant to section 226.040;

21 (9) "Extreme weather event", a severe weather occurrence, including but not limited to
22 fire, flood, earthquake, tornado, wind, hurricane, storm, ice, abnormal rainfall, blizzard, or
23 extended periods of severe inclement weather;

24 (10) "Letting date", the date established by the commission for the acceptance of bids by
25 contractors under section 227.100;

26 (11) "Mail", a dated written transmittal sent to the addressee by regular or certified mail;

27 (12) "Maintenance", routine work performed on state highways by employees of the
28 commission or contractors to the commission, including minor pavement and shoulder repairs,
29 striping, grading, irrigation ditch clearing, street overlays, and other work determined by the

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commission not to conflict with public utilities;

(13) "Notice to proceed", notice by the commission to a contractor to proceed with work on a contract awarded by the commission;

(14) "Owner", the individual, firm, joint venture, partnership, corporation, association, cooperative, municipality, county, district, political subdivision, department, agency, or any other institution owning or operating utility facilities;

(15) "Project plans", any plan for highway construction projects demonstrating the need to design and conduct utility facility alterations or relocations due to the work;

(16) "Relocate" or "relocation", the adjustment of utility facilities, as the commission or director may determine is necessary in connection with the construction of a state highway.

Relocation includes:

(a) Removing and reinstalling the utility facility, including necessary temporary facilities;

(b) Moving, rearranging, or changing the type of existing utility facilities; and

(c) Taking any necessary safety and protective measures; (17) "Relocation plan," a plan designed by the owner to carry out utility facility relocation work to accommodate a construction project on a state highway;

(18) "Resurfacing", work which provides a new roadway surface for existing pavement on a state highway, including minor base patching, intersection paving, shoulder work, and guard rail work which is determined by the commission not to conflict with public utilities;

(19) "State highway", a highway constructed or maintained at the cost of the state or constructed with the aid of state funds or United States government funds or any highway included by authority of law in the state highway system or any highway constructed under the authority of a transportation development district or corporation under chapter 238, RSMo, where such contract is awarded under section 227.100;

(20) "Utility contractor", a person contracting with an owner of a utility facility or a subcontractor to a person contracting with an owner of a utility facility, for the alteration relocation or installation of a utility facility in connection with a construction project on a state highway;

(21) "Utility facility", any underground facility as defined in section 319.015, RSMo, and

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aboveground facilities, including poles, lines, wires, and appurtenances for the purposes of electrical power, telephone, telegraph, fiber optic and cable television services, and any other purpose or which aboveground utility facilities may be located along state highways;

(22) "Work", construction and services required of the contractor by the contractor's contract with the commission, including excavation as that term is defined in section 319.015, RSMo.

227.243. 1. At the earliest possible date in the design of a construction project on a state highway, the commission shall attempt to determine what utility facilities are located within the right-of-way of the planned construction project by researching permit files and reviewing map files maintained by the commission. The commission shall also, as necessary, conduct field investigations and contact local governments to identify any utility facilities within the right-of-way.

2. Within thirty days of completion of the survey conducted under subsection 1 of this section, the commission shall notify in writing owners of each known utility facility that a construction project is planned that may conflict with their utility facility. The notification shall include the name or route number of the highway, the geographical limits of the planned construction project, a general description of the work to be done including a preliminary plan, the desired date for completion of a relocation plan, and the anticipated month and year a letting date could be set for the construction project.

3. The owner shall examine the notice and notify the commission in writing of any utility facility not correctly described in the commission's notice. Within sixty days of receiving the notice required in subsection 2 of this section, the owner shall provide a written response to the commission. The response shall describe and provide the general location of each utility facility of the owner by confirming the location shown in the commission's notice or by providing additions or corrections.

227.244. 1. Upon completion of the initial design of the construction project, the commission shall provide at least one set of project plans to each owner of a utility facility identified under section 227.243.

2. The project plans shall show those portions of the construction project upon which the

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owner's utility facilities are located and where the utility facilities of other owners are located in relation to work required for the project. The commission shall also provide with the project plans a description of any right-of-way still to be purchased and the anticipated letting date of the project. The project plan shall be accompanied by a complete set of plans including profile, cross-section, drainage, signal, lighting, signing plans, temporary road plans that may affect utilities, and other pertinent plan sheets. Upon request of the owner, the commission shall provide any additional plan information needed by the owner to design and lay out the removal, relocation, or adjustment of existing facilities and the placement of relocated or new utility facilities within the limits of the construction project.

3. Within thirty days of receipt of the project plans, the utility owner shall develop a preliminary plan of adjustment and return the marked-up project plans to the commission. The plan of adjustment shall include:

- (1) Verification that all utility facilities are shown;
- (2) The proposed location of adjusted utility facilities;
- (3) Any additional right-of-way requirements; and
- (4) Any other concerns.

4. When two or more owners have facilities in the area encompassed by the construction project, the commission shall schedule a utility coordination meeting as soon as possible but no longer than thirty days from the date the project plans were mailed. The commission's project manager and all owners are required to attend this meeting. If there is a conflict between two owners which cannot be satisfactorily resolved by the owners, the commission shall determine the most appropriate method to resolve the conflict between the two owners, and, in making such determination, shall weigh equally the length of time necessitated by each owner's proposal, and the relative cost to each owner if the other's proposal is adopted. The commission shall notify all utility owners involved with the project in writing of the commission's acceptance or revisions to the utility plan of adjustment.

227.245. 1. Within one hundred twenty days of receiving written notice of approval of the utility plan of adjustment from the commission, the owner shall provide the commission with a relocation plan. The one hundred twenty-day clock stops after the relocation plan is submitted

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1 by the owner. If, after timely submission of the relocation plan by the owner, revisions or
2 alterations are necessary for any reason, or if the original relocation plan was incomplete due to
3 information needed from other parties, the one hundred twenty-day clock begins to run again
4 when the needed information is received back by the owner.

5 2. The relocation plan shall include a narrative description of work that will be done in
6 relocating the owner's utility facilities and whether the work or a portion of the work must be
7 coordinated with or is contingent upon work being performed by another utility facility owner or
8 the contractor to the commission. The relocation plan shall list, if applicable, any anticipated
9 issues or problems related to the acquisition of right-of-way. The relocation plan shall, if
10 applicable, detail the anticipated number of days to acquire additional easements not provided
11 within the new highway right-of-way. The relocation plan shall also give estimates as to the time
12 needed to obtain any necessary customer approvals for cut-over dates, if necessary. The
13 relocation plan shall state when the work will be started and the length of time in days estimated
14 to complete the work. It is permissible for an owner to state in a relocation plan that the owner's
15 work will be completed within a stated number of days from the date that a contractor or another
16 owner completes certain identified work which interferes with the owner's work. The relocation
17 plan shall identify any contingencies, if applicable, that may impact the anticipated start of
18 relocation. The relocation plan shall also describe whether the plan is incomplete due to:

19 (1) Other owners failing to coordinate their plans with the owner submitting the plan;

20 (2) Other owners failing to provide information necessary to submit a complete relocation
21 plan;

22 (3) The commission failing to provide any information required by subsection 2 of section
23 227.244; or

24 (4) Any other reason explained in the plan regarding the circumstances and cause of the
25 plan being incomplete.

26 3. The commission shall review the relocation plan to ensure compatibility with permit
27 requirements, the project plan, and the anticipated letting date and notice to proceed for the
28 project. If utility relocation is dependent upon or must be coordinated with work to be completed
29 by the contractor, the relocation plan shall assure timely completion of the project. If the

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1 relocation plan is acceptable to the commission, the commission shall notify the owner in writing
2 within thirty days of receiving the plan. If the relocation plan submitted by the owner is not
3 compatible, reasonable, or does not allow timely completion of the project, the commission shall
4 advise the owner in writing as soon as practicable, but not later than thirty days after receiving the
5 relocation plan. The commission shall specify in the notice which parts of the relocation plan it
6 finds objectionable, and the reasons for its conclusions. The owner shall submit a revised
7 relocation plan within thirty calendar days after receipt of notice by the commission that the
8 relocation plan is not acceptable. The commission shall review the revised relocation plan, and if
9 the relocation plan is still not acceptable, the commission shall provide a relocation plan to the
10 owner. The owner shall not be bound by the terms of the commission's relocation plan if such
11 relocation plan:

12 (1) Requires the payment of overtime to employees to expedite the construction project;
13 or

14 (2) Requires the owner to comply with a deadline which is not feasible due, in whole or in
15 part, to one or more factors outside the control of the owner.

16 4. If the owner informs the commission, in writing, or the commission determines that the
17 owner's relocation work is dependent upon or must be coordinated with work being performed by
18 the commission's contractor, the commission shall convene a meeting of the contractor and the
19 one or more owners whose relocation work is dependent upon or must be coordinated with the
20 contractor's work. Such meeting shall be held after the letting date at which bids were received
21 for the construction project, but prior to the issuance of a notice to proceed to the commission's
22 contractor. After such meeting, and before or concurrent with the issuance of a notice to proceed,
23 the commission shall provide a schedule for the relocation of utilities to the owner and the
24 commission's contractor. If the approved relocation plan, or a portion of such plan, is dependent
25 upon or must be coordinated with work to be performed by the contractor, the contractor shall
26 notify the commission of its best estimate of the date that all construction necessary for the
27 relocation of utilities will be completed, at least fourteen days prior to such date. If such
28 completion date is delayed due to weather or other causes, the contractor shall immediately notify
29 the commission of the delay and the revised expected completion date. The contractor shall give a

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1 second notice to the commission five days prior to the date work will be completed as necessary
2 for relocation work to begin. It shall be the responsibility of the commission to notify the owner
3 or owners of the contractor's estimated completion dates. The contractor may also notify the
4 owner directly of such dates, if the contractor has received information from the owner under
5 subsection 7 of this section, but such notice shall not relieve the commission of its obligation to
6 notify the owner. If the contractor's delay causes additional delay by the owner, the commission
7 and the owner shall negotiate in good faith to determine the new completion date.

8 5. (1) The commission shall notify the owner in writing not less than thirty days before
9 the owner is required to begin relocation provided for in the approved relocation plan. Unless the
10 owner has encountered excusable delay as set forth in subsection 4 of section 227.248, the owner
11 shall complete its work within the time frame described in the relocation plan, and shall complete
12 all work that can be done prior to construction before the issuance of the notice to proceed,
13 including work that may need to be coordinated with other utility owners but is not dependent on
14 the work of the contractor.

15 (2) The notice required by subdivision (1) of this subsection shall include the name,
16 address, telephone number, facsimile number, and electronic mail address of the commission's
17 contractor and any subcontractors performing work on the construction project. Such information
18 shall also include the name and title of an individual employed by the contractor or subcontractor
19 having primary responsibility for the construction project. Within fifteen days of receiving notice,
20 the owner shall provide to the commission and the commission's contractor the name, address,
21 telephone number, facsimile number, and electronic mail address of the employee of the owner
22 who is responsible for implementation of the owner's relocation plan and the same information for
23 any utility contractor to the owner for purposes of carrying out the relocation plan.

24 6. The owner shall notify the commission when relocation work has started. During the
25 course of the relocation work, the commission may require owners to provide progress reports
26 until its relocation is completed. The owner shall notify the commission when all relocation work
27 is complete. All notices of either starting or completion of relocation work and all monthly
28 progress reports shall be provided within five days after such dates.

29 227.246. 1. If, prior to the letting date of the construction project, the commission's

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1 project plan is changed so that additional or different utility relocation work is found necessary,
2 the commission shall furnish a revised project plan under section 227.244, and the owner shall
3 provide the commission with a revised relocation plan under section 227.245, except that the time
4 allowed for the owner to submit the revised relocation plan after receipt of the revised project plan
5 shall not exceed sixty days.

6 2. If, after the letting date of the highway construction project, additional utility relocation
7 work is found necessary which was not indicated on the original project plan, the commission
8 shall provide the owner with a revised project plan within fifteen days and the commission and the
9 owner shall agree on a reasonable schedule for completion of the additional utility location.

10 227.247. 1. The commission shall have authority to require that any required notice,
11 response, or plan be submitted by mail or certified mail. Otherwise notices, plans, and other
12 statements in writing may be provided by mail, facsimile, or electronic mail. The commission
13 may require that some form of proof of receipt be provided in regard to any notice, plan, or other
14 statement in writing. Upon mutual agreement between the commission and an owner, additional
15 time may be granted for the completion of any act required by sections 227.241 to 227.249.

16 2. Nothing in sections 227.241 to 227.249 shall be construed to relieve a contractor from
17 making notice of excavation as required by sections 319.010 to 319.050, RSMo, of the
18 underground facility safety and damage prevention act, or complying with the requirements of
19 sections 319.075 to 319.090, RSMo, of the overhead powerline safety act, except to the extent
20 that any provisions of sections 227.241 to 227.249 require additional obligations beyond those set
21 forth in sections 319.011 to 319.050, RSMo, or sections 319.075 to 319.090, RSMo, in which
22 case the requirements of sections 227.241 to 227.249 shall prevail.

23 227.248. 1. If the owner of a utility facility fails to provide the responses or corrections to
24 project plans required by sections 227.243 to 227.246, the commission may recover from the
25 owner damages in the amount of up to one hundred dollars per day for each day the required act is
26 not completed.

27 2. If the owner fails to provide a relocation plan or fails to timely relocate utility facilities
28 in accordance with the relocation plan as required by section 227.245, the commission may
29 recover from the owner damages in the amount of up to one thousand dollars per day for each day

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1 the required act is not completed.

2 3. The damages authorized by subsections 1 and 2 of this section may be recovered
3 through actions brought by the chief counsel to the commission, or may be referred to the attorney
4 general for appropriate action. An action to collect the damages authorized by this section shall
5 be brought in a court of appropriate jurisdiction. All damages collected under this section shall be
6 deposited in the state road fund.

7 4. No damages or fines of any kind shall be assessed for delays that result, in whole or in
8 part, directly or indirectly, from any of the following:

9 (1) Customer delays;

10 (2) Labor strikes or shortages;

11 (3) Terrorist attacks, riots, civil unrest, or criminal sabotage;

12 (4) Acts of God, or extreme weather events;

13 (5) Delays caused by staffing shortages in the geographic area near the commission's
14 construction project due to the owner's need to reassign an unusual number of workers to any
15 other area to respond to an act of God or extreme weather event;

16 (6) The failure of another owner to sufficiently complete its required relocation of utility
17 facilities that interfere with an owner's relocation plan;

18 (7) The failure of another owner or delay by another owner in submitting relocation plans
19 that interfere with an owner's relocation plan;

20 (8) Delays by the commission in acquiring necessary right-of-way or necessary easements;

21 (9) Delays caused by facility damages or cable cuts caused by the commission's
22 contractor, other owners, or third parties;

23 (10) Unusual material shortages; and

24 (11) Any other event or action beyond the reasonable control of the owner.

25
26 The occurrence of any of the unusual events listed in this section shall constitute an affirmative
27 defense to the assessment of damages under the provisions of this section.

28 5. The removal and relocation of utility facilities shall be made at the expense of the
29 owners unless otherwise provided by the commission. If the owner fails to relocate the utility

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1 facilities in accordance with the relocation plan as required by section 227.245, the utility
2 facilities may be removed and relocated by the state highways and transportation commission, or
3 under its direction, and the cost of relocating the utility facilities shall be collected from such
4 owner. If the state highways and transportation commission or its designee removes and relocates
5 the utility facilities, the utility owner shall not be liable to any party for any damages caused by the
6 commission's or the commission's designee's removal and relocation of such facilities.

7 227.249. Any home rule city having a population of sixty thousand inhabitants or greater
8 or any charter county of the first classification may adopt ordinances, policies, resolutions, or
9 regulations consistent with sections 227.241 to 227.249 regarding the relocation of utility facilities
10 located within the right-of-way of streets, highways, or roads under their respective jurisdiction,
11 which are not state highways. Any ordinance, policy, resolution, or regulation adopted under the
12 authority of this section shall not infringe upon, negate or otherwise abrogate an owner's right to
13 construct, own, operate, and maintain utility facilities within the right-of-ways of such political
14 subdivision that the owner otherwise enjoyed prior to the adoption of such ordinance, policy,
15 resolution, or regulation."; and

16
17 Further amend said bill by amending the title, enacting clause, and intersectional references
18 accordingly.

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